



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BC/HMF/2019/0013**

Property : **Flat 36, Avondale Court,
Churchfields, London E18 2RD**

Applicants : **Marius Eugen Podaru**

Representative : **Mr Gavin Bennison (Counsel)**

Respondents : **Crafrule Limited**

Representative : **Mr Aryeh Kramer (Solicitor)**

Type of Application : **Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal Member : **Judge Robert Latham
Sue Coughlin MCIEH**

**Date and Venue of
Hearing** : **19 June 2019 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **28 June 2019**

DECISION

Decision of the Tribunal

1. The Tribunal makes a rent repayment order ('RRO') that the Respondent shall refund the sum of £4,025 by 19 July 2019.
2. The Tribunal determines that the Respondent shall also pay the Applicants £300 by 19 July 2019, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Applications

1. The Tribunal is required to determine an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for RROs in respect of Flat 36, Avondale Court, Churchfields, London, E18 2RD ("the property").
2. On 27 March 2019, the Tribunal gave Directions. These are given to enable the Tribunal to determine such applications fairly by indicating to the parties how they should present their cases. The Respondent was directed to file a bundle of documents including:
 - (i) A full statement of reasons for opposing the application, including any defence to the alleged offence and response to any grounds advanced by the applicant, and dealing with the issues identified in the Directions;
 - (ii) A copy of the tenancy agreement;
 - (iii) Evidence of the amount of rent received in the period (less any universal credit/housing benefit paid to any person), with details of the occupancy by the tenant on a weekly/monthly basis;
 - (iv) A copy of all correspondence relating to any application for a licence and any licence that has now been granted;
 - (v) The name(s) of any witnesses who will give evidence at any hearing, with a signed and dated statement/summary of their evidence, stating that it is true;
 - (vi) A statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order;
 - (vii) Evidence of any outgoings, such as utility bills, paid by the landlord for the let property;
 - (viii) Any other documents to be relied upon at the hearing.
3. The Respondent has failed to comply with the Directions, either by the 15 April 2019 (the date specified in the Directions) or 24 May (the extension granted on 25 April). On 17 June, the Tribunal made an order restricting the role that the Respondent is able to take at the hearing.
4. The Applicant has filed a bundle on behalf of the Applicants. This includes witness statements by Michael Michael (the Applicant's Solicitor), the Applicant, and Simona Broasca-Podaru (the Applicant's sister).

The Hearing

5. The Applicant was represented by Mr Gavin Bennison, Counsel. He was accompanied by Mr Michaels, a trainee solicitor with Fahri LLP. Neither the Applicant nor his sister attended to give evidence. Mr Bennison stated that he did not consider it necessary for them to be present given that the Respondent has been debarred from giving evidence. We are grateful for the care with which he took us through the complex statutory provisions.
6. The Respondent was represented by Mr Kramer, a Solicitor with Waller Pollins Goldstein. His firm has only been instructed since 13 June. The Respondent had previously instructed Bude, Nathan and Iwanier, Solicitors. Mr Kramer provided a Skeleton Argument. He took every point that he could on behalf of his client.
7. Having regard to the debarring order made on 17 June, the Tribunal determined that the Respondent should not be permitted to adduce any evidence, but should be permitted to make representations on the basis of the documents before the Tribunal.
8. The legislative provisions are annexed to this decision.

Our Determination

9. On 1 November 2016, Crafrule Limited granted the Applicant and his sister, Ms Broasca-Podaru, an assured shorthold tenancy of the property for a term of six months at a rent of £1,150 pm. The flat is a two-bedroom flat on the top floor of a three-storey block of flats. Upon the expiring of the fixed term, the tenancy continued as a statutory periodic tenancy.
10. Clause 12 of the tenancy agreement provided the statutory information required by sections 47 and 48 of the Landlord and Tenant Act 1985. The address at which any notices should be served was given as “Crafrule Limited, c/o City Estates, 141a Stamford Hill, London N16 5LG”.
11. There are pending proceedings before the County Court. On 20 July 2018, “City Estates” issued a claim against the Applicant and his sister in the County Court Business Centre claiming rent arrears of £4,600. It was averred that no rent had been paid since April. On 17 August 2018, the tenants filed a Defence and Counterclaim. The status of City Estates was challenged. It was averred that the tenants had an equitable set-off in respect of disrepair. On 14 February 2019, the County Court substituted Crafrule Limited as the relevant claimant. This action has not been determined. It is for the County Court to determine the respective contentions in these proceedings.
12. The Applicant issued his application against both Crafrule Limited and City Estates Limited. Mr Kramer makes two points:

(i) Crafrule Limited is not the relevant landlord. We permitted Mr Kramer to produce the Official Copy of the Register of title which records that Chaseville Limited is the registered proprietor. It has the same registered address as the Applicant. It would seem that they are linked companies. We do not accept Mr Kramer's argument. Crafrule Limited granted the tenancy and is estopped from denying its title. It is the relevant landlord.

(ii) The application should not have been issued against City Estates Limited as the correct name of the managing agent is City Estates (London) Limited. Mr Bennison explained that the application had also been issued against City Estates Limited as "City Estates" had issued the money claim against the tenants. We understand why the Applicant joined City Estates Limited as a second respondent. We are satisfied that Crafrule Limited is the relevant landlord. We therefore remove City Estates Limited as a party to these proceedings pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Tribunal Rules ("the Tribunal Rules")). No costs have been thrown away by this excess of caution.

13. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95(1) of the 2004 Act. We are satisfied that:

(i) The London Borough of Redbridge designated the area in which the property is situated as an area for selected licencing (section 80). This designation came into effect on 1 October 2018. We accept the evidence of Mr Michael on this ([12] to [19] of his witness statement and the relevant documents annexed thereto);

(ii) The Respondent was the "person having control" of the property as it receives the rack-rent (section 263).

(iii) The property required a licence (see sections 79 and 85).

(iv) The property was not licenced. Mr Michael satisfies us that the property was not licenced throughout the relevant period.

(v) An offence was committed between 1 October 2018 and 29 March 2019. Mr Michael confirms that there was no licence when he checked the public register on 29 March 2019. However, an application had been made when he again checked the register on 8 April. It is a defence where an application for a licence has been duly made (section 95(3)(b)).

(vi) The offence was committed in the period of 12 months ending with the day on which the application was made (section 41(2)).

14. A Tribunal may only make a RRO if satisfied beyond reasonable doubt that a landlord has committed a relevant offence (section 43 of the 2016 Act"). An offence under section 95(1) of the 2004 is such a relevant offence (s.41(3)). Mr Kramer argued that we could not be satisfied to the criminal

standard of proof that the Respondent had committed such an offence. We disagree. Mr Michael has provided clear and cogent evidence of his diligent inquiries in his witness statement. He has not been challenged on his evidence which is uncontradicted.

15. The 2016 Act gives the Tribunal a discretion as to whether to make a RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenants during this period, less any award of universal credit paid to any of the tenants. We are satisfied that the Mr Podaru paid the rent and that he was not in receipt of any state benefits and that he paid the rents from his earnings.
16. Mr Bennison seeks a rent repayment order for the six-month period from 1 October 2018 to 29 March 2019. He relies upon the witness statement of Mr Podaru in which he states that he paid the rent during this period. Records of the payments are at p.35-40 of the Bundle. There is no record of a payment on 1 March 2019. Mr Bennison stated that this was because the tenants had left the property on 1 April 2019 and had set their last month's rent against their deposit of £1,564.
17. Mr Kramer raised two issues:
 - (i) No rent was paid during the period April to July 2018. The landlord was therefore entitled to appropriate the rent paid against the rent due for this earlier period.
 - (ii) There was no evidence that the landlord and tenants had agreed to set-off the March 2019 rent against the deposit. Neither party was able to assist with what part of the deposit, if any, had been repaid. Mr Bennison was handicapped by not having his clients present.
18. We reject Mr Kramer's first argument. There is no evidence that the landlord did elect to appropriate the rent paid in respect of the arrears due in the earlier period. In any event, there are proceedings in the County Court in which the tenants contend that they have an equitable set-off in respect of the disrepair. It is not for this tribunal to determine the matters which are before the County Court.
19. We accept Mr Kramer's second argument. We are not satisfied that rent was paid in March 2019. Our starting point is therefore the rent paid for the five-month period, namely from 1 October to 1 February. The total is £5,750 (£1,150 x 5).
20. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord.

(ii) The conduct of the tenants.

(iii) The financial circumstances of the landlord.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.

21. In determining the amount of any RRO, we have had regard to the guidance given by the George Bartlett QC, the President of the Upper Tribunal (“UT”) in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the 2004 Act where the wording of section 74(6) is similar, but not identical, to the current provisions. The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. Although the period for which a RRO can be made is limited to 12 months, a tribunal should have regard to the total length during which the offence was committed. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than the non-professional landlord.
22. The UT went on to consider the RRO that was appropriate in that case. In considering the profit made by the landlord during the relevant period, the UT considered it appropriate to make deductions for various expenses associated with the costs of letting the property. The Respondent has adduced no evidence of such expenses. It has had ample opportunity to do so. Neither has it adduced any evidence of the Respondent’s financial circumstances.
23. We are required to have regard to the conduct of the landlord. The Respondent is one of a number of linked companies engaged in the letting of properties. It engaged managing agents. It ought to have known of the licencing requirements. We have some limited regard to the fact that there was no smoke detector and that the appliances were not PAT tested. We do not have regard to the alleged disrepair which is a matter for the County Court.

24. Mr Bennison asked us to have regard to the conduct of the landlord in the conduct of these proceedings. A number of issues have been raised which have been found to be without substance. We are satisfied that we should not take these matters into account. The 2016 Act is focussed on the conduct of the landlord and tenant whilst the relationship of landlord and tenant subsists. Any unreasonable conduct would rather be relevant to costs under Rule 13(1) of the Tribunal Rules.
25. We are required to have regard to the conduct of the tenants. The only factors which has been raised is the alleged rent arrears. This is also a matter for the County Court. There may be an equitable set-off.
26. Having regard to the submissions which have been made to us and taking all relevant matters into account, we make a RRO of 70% of the rent of £5,750 which has been paid over the relevant period, namely £4,025. This is at the higher end of the appropriate scale.
27. The Tribunal furthers order that the Respondent should refund the tribunal fees of £300 paid by the Applicant pursuant to Rule 13(2) of the Tribunal Rules. The Applicant is the successful party.

Judge Robert Latham
28 June 2019

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of Relevant Legislation
Housing Act 2004

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless-

- (a) a temporary exemption notice is in force in relation to it under section 62, or
- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if-

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if-

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);

- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –
 - (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if –
- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43 Making of a rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).

- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
 - (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
 - (a) the rent in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account –
 - (a) the conduct of the landlord and the tenant,
 - (b) the financial circumstances of the landlord,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.